

NTSB Order No.
EM-128

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 15th day of November, 1985

JAMES S. GRACEY, Commandant United States Coast Guard,

vs.

WOODROW W. STUMES, Appellant.

Docket ME-116

ORDER GRANTING MOTION TO DISMISS

The Coast Guard has moved to dismiss the instant appeal on the ground that the notice of appeal filed by appellant was untimely under Rule 5(a) of the Board's "Rules of Procedure for Merchant Marine appeals from Decisions of the Commandant, U.S. Coast Guard," 49 CFR 825.5(a).¹ Appellant, by counsel, has filed an answer opposing the motion. For the reasons that follow the motion to dismiss will be granted.

By notice of appeal filed July 10, 1985, appellant indicated his intent to appeal a decision of the Vice Commandant (acting delegation in Appeal No. 2391) That "was served upon counsel for Mr. Stumes on June 24, 1985."² The notice requested and extension

¹Rule 5(a) provides as follows:
"§825.5 Notice of appeal.

(a) A party may appeal from the Commandant's decision sustaining an order of revocation, suspension, or denial of a license, certificate, document, or register in proceedings described in §825.1, by filling a notice of appeal with the Board within 10 days after service of the Commandant's decision upon the party or his designated attorney. Upon good cause shown, the time for filling may be extended."

²In his answer appellant suggests that service of the Vice Commandant's decision was deficient because it was sent to him not by the Commandant's office, which mistakenly had served an attorney no longer retained by appellant, but by the Administrative Law Judge who had presided at his evidentiary hearing. We think the receipt of the decision by appellant's

of time for filing on the ground that appellant was then, and since June 5 had been, serving as a radio officer on a international voyage, and was not scheduled to return to a U.S. port until July 15, and asserted that the filing of the notice by counsel was authorized following a "High Seas radio consultation" with appellant on July 10. The notice did not indicate whether counsel for appellant had made any effort before July 10 to contact appellant concerning the Vice Commandant's decision or whether such contact would have been possible. In any event, the Coast Guard's motion is based on appellant's failure to file his notice of appeal within 10 days after June 24.³

The Board rule that sets forth the filing deadline for a notice of appeal states that "[U]pon good cause shown, the time for filing may be extended."⁴ Inasmuch as appellant has not shown good cause for his failure to file either a timely notice of appeal or a timely request for an extension of time to do so, his notice appeal will be dismissed on the Coast Guard's motion.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Coast Guard's motion to dismiss is granted, and
2. The notice of appeal in Docket ME-116 is dismissed.

BURNETT, Chairman, GOLDMAN, Vice Chairman and BURSLEY, Member of the Board, concurred in the above order.

current counsel constituted adequate "service...upon the party or his designated attorney" under our Rule 5(a), which does not purport to prescribe how service of the decisions of the Vice Commandant is to be effected.

³See "Answer to Appellant's Response to Commandant's Motion to Dismiss" at p.2. The Vice Commandant's decision was on June 13, 1985.

⁴It is the seaman's obligation to take such steps as may be necessary to preserve his appeal rights during a prolonged absence.